UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LACEE M. LEES, Plaintiff, v. CAROLYN W. COLVIN, Acting Commissioner of Social Security, Defendant.	CASE NO. C13-1663-RSL-MAT REPORT AND RECOMMENDATION RE: SOCIAL SECURITY DISABILITY APPEAL

Plaintiff Lacee M. Lees proceeds through counsel in her appeal of a final decision of the Commissioner of the Social Security Administration (Commissioner). The Commissioner denied plaintiff's application for Supplemental Security Income (SSI) after a hearing before an Administrative Law Judge (ALJ). Having considered the ALJ's decision, the administrative record (AR), and all memoranda, the Court recommends this matter be AFFIRMED.

FACTS AND PROCEDURAL HISTORY

Plaintiff was born on XXXX, 1971.[1] She has an Associate's Degree, has taken other college-level classes, and is certified to work as a nursing assistant. (AR 36-40, 43, 57-58.)

1 Plaintiff's date of birth is redacted back to the year of birth in accordance with Federal Rule of Civil Procedure 5.2(a) and the General Order of the Court regarding Public Access to Electronic Case Files, pursuant to the official policy on privacy adopted by the Judicial Conference of the United States.

Plaintiff previously worked as a nursing assistant. (AR 43-44, 58.)

Plaintiff filed her SSI application with a protective filing date in December 2011, alleging disability since January 1, 2007. (AR 160-63.) Her application was denied initially and on reconsideration, and she timely requested a hearing. ALJ Kimberly Boyce held a hearing on December 3, 2012, taking testimony from plaintiff and a vocational expert. (AR 29-63.) On January 7, 2013, the ALJ found plaintiff not disabled. (AR 12-24.)

Plaintiff timely appealed. The Appeals Council denied review on July 11, 2013 (AR 1-5), making the ALJ's decision the final decision of the Commissioner. Plaintiff appealed this final decision of the Commissioner to this Court.

JURISDICTION

The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. § 405(g).

DISCUSSION

The Commissioner follows a five-step sequential evaluation process for determining whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it must be determined whether the claimant is gainfully employed. The ALJ found plaintiff had not engaged in substantial gainful activity since the December 2011 application date. *See* 20 C.F.R. § 416.335 (earliest month SSI payments can begin is the month following the month in which the application was filed). At step two, it must be determined whether a claimant suffers from a severe impairment. The ALJ found plaintiff's depression, anxiety, and substance addiction severe. Step three asks whether a claimant's impairments meet or equal a listed impairment. The ALJ found plaintiff's impairments did not meet or equal the criteria of a listed impairment.

If a claimant's impairments do not meet or equal a listing, the Commissioner must assess residual functional capacity (RFC) and determine at step four whether the claimant has demonstrated an inability to perform past relevant work. The ALJ found plaintiff had the RFC to perform a full range of work at all exertional levels, except that, in order to persist through an ordinary work schedule and employer production expectations and remain within customary employer rules regarding attendance, plaintiff could understand, remember, and carry out work that is unskilled, routine, and repetitive, permits a variable pace through a shift to complete the assigned work by the end of each shift, and has no more than occasional work setting change. With this RFC, the ALJ found plaintiff unable to perform past relevant work.

If a claimant demonstrates an inability to perform past relevant work or has no past relevant work, the burden shifts to the Commissioner to demonstrate at step five that the claimant retains the capacity to make an adjustment to work that exists in significant levels in the national economy. The ALJ concluded plaintiff could perform other jobs existing in significant levels in the national economy, such as work as a housekeeping cleaner and industrial cleaner. The ALJ, therefore, concluded plaintiff was not disabled at any time from the application date through the date of the decision.

This Court's review of the final decision is limited to whether the decision is in accordance with the law and the findings supported by substantial evidence in the record as a whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means more than a scintilla, but less than a preponderance; it means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989). If there is more than one rational interpretation, one of which

supports the final decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002).

Plaintiff argues the ALJ erred in evaluating medical opinions and her credibility, resulting in error at steps four and five. She requests remand for an award of benefits. The Commissioner maintains the ALJ's decision has the support of substantial evidence and should be affirmed.

Medical Opinions

In general, more weight should be given to the opinion of a treating physician than to a non-treating physician, and more weight to the opinion of an examining physician than to a non-examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). Where, as in this case, the opinions of examining physicians are contradicted by other opinion evidence, such opinions may not be rejected without "'specific and legitimate reasons' supported by substantial evidence in the record for so doing." *Id*. at 830-31 (quoting *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)).

A. Dr. Robert Parker

Dr. Robert Parker examined plaintiff on behalf of the Washington State Department of Social and Health Services (DSHS) in December 2010 (AR 228-35), August 2011 (AR 236-45), and July 2012 (AR 432-45). The ALJ gave these opinions little weight. (AR 20-21.)

In 2012, Dr. Parker assessed plaintiff with a global assessment of functioning (GAF) score 35,[2] and opined she "appears to have minimal ability to handle daily activities beyond

2 According to an earlier version of the Diagnostic and Statistical Manual of Mental Disorders (DSM), a GAF of 35 indicates "some impairment in reality testing or communication" or "major

basic survival needs." (AR 432-34.) The ALJ found this opinion inconsistent with the record, which showed "a fairly active range of activities," including "performing household chores, watching television, shopping with her friend, and going to the library to read and use the computer." (AR 20.) The ALJ also found Dr. Parker's opinion that plaintiff had problems initiating and completing tasks inconsistent with examination findings showing she is able to follow three-step commands and recall words immediately and after a delay. (AR 20-21 (citing AR 433, 435).) She had previously described the examination results from Dr. Parker and others as reflecting generally unremarkable objective findings. (AR 17-18 (describing Dr. Parker's testing results and observations, including, *inter alia*, her "almost perfect" mental status examination (MSE) score of 29 out of 30 in 2010, and her ability to follow three-step commands and recall digits forwards and backwards).)

The ALJ stated Dr. Parker's 2010 and 2011 assessments "similarly opined very restricted functioning that is inconsistent with the overall record." (AR 21.) In 2011, Dr. Parker assessed a GAF of 35, moderate limitations in following simple or complex instructions, marked limitations in the ability to learn new tasks, and severe limitations in performing routine tasks without undue supervision, working with public contact or limited public contact, and maintaining appropriate behavior in a work setting. (AR 237-38.) In 2010, Dr. Parker

---

impairment in several areas, such as work or school family relations, judgment, thinking or mood." DSM-IV-TR 34 (4th ed. 2000). The most recent version of the DSM does not include a GAF rating for assessment of mental disorders. DSM-V at 16-17 (5th ed. 2013). While the Social Security Administration continues to receive and consider GAF scores from "acceptable medical sources" as opinion evidence, a GAF score cannot alone be used to "raise" or "lower" someone's level of function, and, unless the reasons behind the rating and the applicable time period are clearly explained, it does not provide a reliable longitudinal picture of the claimant's mental functioning for a disability analysis. Administrative Message 13066 ("AM-13066").

assessed a GAF of 45,[3] mild limitations with simple instructions, moderate limitations with complex instructions, and marked limitations in performing routine tasks without undue supervision, working with public contact or limited public contact, and maintaining appropriate behavior. (AR 229-30.) The ALJ found the assessed limitations unsupported by the examination findings. She contrasted the severe limitations in social functioning with Dr. Parker's report that plaintiff was alert, clean appearing, responsive, and cooperative (AR 21 (citing AR 242)), and the marked and severe limitations in cognitive functioning with Dr. Parker's report that plaintiff was able to recall three out of three words immediately, recall two out of three words after a delay, exhibited good concentration, and followed the flow of conversation and a three-step command. (*Id*. (citing AR 243).) The ALJ found "[s]uch significant inconsistencies" to undermine the persuasiveness of the opined limitations. (*Id*.)

Plaintiff asserts error in the absence of an explanation as to how her ability to engage in the activities identified by the ALJ was inconsistent with opinions as to her limitations in a work setting. She avers the ALJ failed to take into account the worsening of her symptoms, and maintains Dr. Parker's opinions were consistent with her contemporaneous levels of functioning when assessed. (*See, e.g.*, AR 433 (Dr. Parker, in 2012, noted plaintiff's report that she spent her day in pajamas, watched television, went to the methadone clinic daily by bus, showered twice a week, and had purposefully overdosed on benzodiazepines in September 2011), AR 386 (in April 2012, plaintiff reported a lot of depression and anxiety, and was not planning on returning to school), and AR 528 (in June 2012, plaintiff relapsed on

3 A GAF of 45 reflects "serious symptoms" or "any serious impairment in social, occupational, or school functioning." DSM-IV-TR at 34.

benzodiazepines when taking care of her uncle).) She also points to her "difficulty" attending counseling related to her methadone program. (Dkt. 22 at 8, citing AR 513-34.)

Plaintiff maintains the ALJ overstepped her authority and expertise, and failed to provide an adequate explanation, in deeming the opinions of Dr. Parker inconsistent with his own examination results. She distinguishes the evidence of her ability to perform tasks in a clinical setting from Dr. Parker's professional assessment of her ability to function in a work setting, as based on his own observations and testing results. She notes the ALJ's failure to acknowledge other observations of Dr. Parker, such as that she was both lethargic and restless, with slowed ambulation, as well as tearful, uncomfortable, and passive. (AR 434.) She also avers the ALJ's failure to address Dr. Parker's opinion that she would have slow performance and stress tolerance. (AR 433.) Plaintiff maintains the ALJ's "alternate interpretation" of the significance of the MSE findings and other observations of Dr. Parker does not suffice as a legally sufficient basis to reject his opinions. (Dkt. 22 at 11.)

"[T]he ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and for resolving ambiguities." *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998) (citing *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995)). *Accord Carmickle v. Comm'r of SSA*, 533 F.3d 1155, 1164 (9th Cir. 2008); *Thomas*, 278 F.3d at 956-57. The ALJ must support her findings with "specific, cogent reasons." *Reddick*, 157 F.3d at 722 (citing *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990)). When evidence reasonably supports either confirming or reversing the ALJ's decision, we may not substitute our judgment for that of the ALJ. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). Stated another way: "Where the evidence is susceptible to more than one rational interpretation, it is the ALJ's

conclusion that must be upheld." *Morgan v. Commissioner of the SSA*, 169 F.3d 595, 599 (9th Cir. 1999) (citing *Andrews*, 53 F.3d at 1041).

An ALJ properly considers inconsistency between a physician's opinion and evidence of a claimant's activities. *Rollins v. Massanari*, 261 F.3d 853, 856 (9th Cir. 2001) (affirming rejection of treating physician's opinion inconsistent with the claimant's level of activity). In this case, the ALJ reasonably contrasted Dr. Parker's opinion that plaintiff had minimal ability to handle activities "beyond basic survival means" (AR 434), with evidence of her activities. Those activities included not only her ability to perform household chores, watch television, shop with a friend, and go to the library to read and use a computer, but also, *inter alia*, her ability to care for her cats, go outside three to four times daily and utilize public transportation, her admission she had no problems getting along with family, friends, neighbors, or others, the fact that she attended classes and performed well academically when she was able to attend, that she managed her own finances, including paying bills, counting change, and using money orders, that she reads, and that she takes daily walks lasting forty to forty-five minutes. (AR 19.) While plaintiff's interpretation may differ, she fails to demonstrate the ALJ unreasonably interpreted the evidence as inconsistent with the opinions of Dr. Parker.

Nor does plaintiff demonstrate error by pointing to a worsening of her symptoms or by focusing on only later-dated treatment records or reports. The ALJ's consideration of plaintiff's activities included records and reports dated in late 2011 and in 2012. (*See*, *e.g.*, AR 173-80 (in November 2011, plaintiff reported taking the bus to her methadone clinic six days a week, caring for her cat, going to school, performing cleaning and laundry, going out three to four times daily, shopping once weekly, and the ability to care for her finances, read, and get

along with others) and AR 265 (in February 2012, plaintiff reported she "walks about 40 to 50 minutes a day and, while she had to drop a couple of courses, she attended classes two days a week).) Also, while plaintiff points to an April 2012 report that she was not returning to school, that document reflects she was not returning "because she can't get enough money to live on and go to school." (AR 386.) It also notes her report she was going to a work source center to complete a resume, was continuing to get out daily to get her methadone, and was "hoping to see her grandmother[r]" that weekend. (*Id*.) Also, while plaintiff interprets the records relating to her methadone program as evidence of her "difficulty" attending counseling, the ALJ reasonably construed this and other evidence as reflecting a failure to follow prescribed treatment, and her noncompliance with treatment as exacerbating any waxing and waning of her symptoms. (AR 18-19.)

An ALJ may also reject a physician's opinion due to a discrepancy or contradiction between the opinion and the physician's own notes or observations. *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005). *See also Morgan*, 169 F.3d at 603 (ALJ appropriately considers internal inconsistencies within and between physicians' reports). In this case, the ALJ reasonably construed Dr. Parker's opinions as to the degree of plaintiff's limitations inconsistent with his own findings on examination, including, for example, inconsistency between the opinion that plaintiff would have difficulty with task completion and plaintiff's demonstrated ability on examination to follow commands and complete tasks. (AR 20-21.) (*See also* AR 436 (testing on "Trails A & B" suggested "No impairment of the ability to follow instructions and perform a complex cognitive task."; observing: "Client proceeded attentively and smoothly during this task.")) While the ALJ did not describe all of Dr. Parker's

observations, plaintiff fails to demonstrate the ALJ's interpretation of the evidence as a whole was not rational. Also, while plaintiff maintains the ALJ failed to address Dr. Parker's opinions as to slow performance and stress tolerance, the ALJ appears to have reasonably construed those statements as related to the opinion regarding task initiation and completion. (*See* AR 433 ("Problems initiating/completing tasks, slow performance, poor stress tolerance (severe), poor coping (severe).”))

The ALJ, in sum, provided specific and legitimate reasons for assigning little weight to the opinions of Dr. Parker. The Court, as such, finds no error.

B. Dr. Barbara Lui

Dr. Barbara Lui examined plaintiff and completed a DSHS evaluation form in January 2010. (AR 406-12.) Dr. Lui assessed a GAF of 40[4] and marked limitations in plaintiff's ability to follow simple instructions, learn new tasks, relate appropriately to coworkers and supervisors, and to tolerate the pressures and expectations of a work setting. (AR 409-10.) (*But see* AR 410 (assessing only moderate limitations in relation to complex instructions, the ability to exercise judgment and make decisions, to perform routine tasks, to interact appropriately in public contacts, and maintain appropriate behavior in a work setting).)

The ALJ gave little weight to the opinions of Dr. Lui. She observed that Dr. Lui did not provide persuasive or detailed explanations supporting the marked limitations assessed, noting that, in relation to simple instructions, "Dr. Lui merely explained that the claimant '[b]ecomes frustrated when she cannot focus and remember things.'" (AR 21 (citing AR

4 A GAF of 40 reflects some impairment in reality testing or communication or major impairment in several areas. DSM-IV-TR 34

410).) The ALJ found this explanation based on plaintiff's self-reported symptoms and "wholly inconsistent with the examination findings showing [she] is able to perform three-step commands." (AR 21.) The ALJ also found Dr. Lui's explanation for the marked limitation in the ability to learn new tasks – plaintiff's "'[d]epressed emotional state affects concentration and motivation'" – based on plaintiff's self-reported symptoms and "inconsistent with the generally unremarkable" MSE findings previously described in the decision. (*Id*.)

Plaintiff raises the same general objections to the ALJ's perception of an inconsistency between the opinions of Dr. Lui and her examination results as raised in relation to Dr. Parker, asserting the ALJ overstepped her authority, failed to explain her reasoning, and ignored various aspects of the report from this physician, as well as taking issue with the ALJ's "alternate interpretation" of the evidence. Again, however, the Court finds no error.

"The ALJ need not accept the opinion of any physician, including a treating physician, if that opinion is brief, conclusory, and inadequately supported by clinical findings." *Thomas*, 278 F.3d at 957. An ALJ may also, as stated above, properly reject a physician's opinions as inconsistent with that physician's own findings on examination, *see Bayliss*, 427 F.3d at 1216, as well as where a physician's opinions are "based 'to a large extent' on a claimant's self-reports that have been properly discounted as incredible." *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) (quoting *Morgan*, 169 F.3d 595, 602 (9th Cir. 1999)).

In this case, the ALJ reasonably pointed to the absence of persuasive or detailed explanations for the opinions of marked limitations assessed by Dr. Lui, providing specific examples in support of her conclusion. (*See* AR 21, 410.) The ALJ further reasonably construed the evaluation as reflecting Dr. Lui's reliance on plaintiff's self-reported symptoms,

which the ALJ found not fully credible. Finally, the ALJ also reasonably construed the opinions as to marked limitations inconsistent with the generally unremarkable MSE findings in the record. (*See* AR 17-18 (describing, in addition to the MSE results from Dr. Parker, Dr. Lewis's observations that plaintiff was oriented, cooperative, and logical, was able to perform serial threes and serial sevens, and able to spell "phone" forward and backward, and Dr. Lui's report that plaintiff exhibited no evidence of disturbance to perception or thought process, "adding only that '[h]er anxious mood overshadowed her ability to concentrate and focus'").)

Plaintiff, at best, sets forth an alternative interpretation of the evidence. Because she fails to demonstrate the ALJ's interpretation of that evidence was not equally rational, she fails to undermine the substantial evidence support for the ALJ's decision.

C. Dr. Janis Lewis

Dr. Janis Lewis examined plaintiff and completed a DSHS evaluation form in February 2009. (AR 398-404.) As observed by the ALJ, Dr. Lewis found no limitations in plaintiff's ability to perform simple tasks, mild limitations with complex tasks, and moderate to marked limitations in social functioning. (AR 400.) The ALJ found the assessed limitations inconsistent with the record, particularly plaintiff's range of functioning. (AR 22.) She also found the limitations "of less probative value in this case because they were provided more than two years [before] the amended alleged onset date of disability." (AR 22.) The ALJ, therefore, assigned the opinions "only some weight." (*Id.*)

Plaintiff notes Dr. Lewis evaluated her shortly after she stopped abusing pain-killers. (AR 400.) She describes Dr. Lewis as noting traits later examiners and providers mentioned, such as social avoidance, anger, and irritability. (*See* AR 337, 400, 404.) Plaintiff maintains

an absence of evidence of activities concurrent with Dr. Lewis's report that would undermine her findings, and error in the ALJ's reliance on a 2012 function report as a basis for rejecting Dr. Lewis's 2009 evaluation. Plaintiff also contends the ALJ's decision is misleading as to the reason for the amendment of the onset date, noting it was changed only because she was entitled to SSI benefits only after the date of her application, 20 C.F.R. §§ 416.305, 416.330, not because she was not disabled at an earlier date.

The Court finds no error established. It should first be noted that the ALJ rejected only a portion of the opinions of Dr. Lewis, as there is no conflict between the opinions of this physician as to plaintiff's cognitive abilities and the RFC assessment of her ability to perform unskilled, routine repetitive work, permitting a variable pace and no more than occasional work setting change. (AR 20, 22, 400.) Also, while the ALJ did rely on evidence of plaintiff's activities during the relevant time period in finding conflict with the opinion evidence, she also pointed to earlier evidence, including plaintiff's reports to Dr. Lewis that she went to the library twice weekly, reads, watches television, and uses the computer at the library, as well as reports she made to Dr. Parker in December 2010. (AR 19 (citing AR 233, 404).) Plaintiff, as such, fails to demonstrate error in the ALJ's finding of inconsistency between the opinions of Dr. Lewis and the evidence of her activities. *Rollins*, 261 F.3d at 856.

Plaintiff further fails to demonstrate error in the ALJ's observation that Dr. Lewis rendered her opinions more than two years before the amended alleged onset date. The ALJ noted at the beginning of the decision that, although SSI is not payable prior to the month following the month in which the application is filed, she considered the complete medical history in reaching her decision. (AR 12.) The ALJ thereafter proceeded to not only consider

the evidence from Dr. Lewis, but to assign the opinions of that physician some weight. (AR 22.) That the ALJ found the opinions of Dr. Lewis to have less probative value than more recent evidence, given the fact that they pre-dated the time period under consideration for an award of disability benefits by more than two years, was entirely reasonable. For this reason, and for the reasons stated above, the ALJ's consideration of the opinion evidence from Dr. Lewis should not be disturbed.

D. Reviewing Physicians

Plaintiff takes issue with the ALJ's consideration of the opinion evidence from reviewing State agency psychological consultants. Dr. James Bailey, in April 2012, opined plaintiff's mental health symptoms would reduce her concentration, persistence, and pace and ability to sustain a regular work routine, but that she is capable of completing both simple and complex instructions. (AR 71.) He found no significant social limitations, opining plaintiff could have routine public contact. (*Id*.) Dr. Michael Brown, in May 2012, concurred with Dr. Bailey, and added that, while plaintiff would occasionally have difficulty adapting to changes in the work setting, she would nonetheless be able to do so within normal tolerances of a competitive work environment. (AR 83.)

The ALJ found the opinions of Drs. Bailey and Brown generally consistent with the evidence of record, including MSE findings indicating plaintiff performed well in concentration testing, such as digit span forward and backward tests, counting backwards, spelling "world" forward and backward, and following a three-step command. (AR 20 (citing AR 435 (Dr. Parker's July 2012 MSE results)).) The ALJ also found the opinions consistent with plaintiff's fairly active range of daily activities. (*Id*.) Due to the consistencies with the

overall record, the ALJ accorded significant weight to their opinions. (*Id*.)

Plaintiff notes that a contradictory opinion of a "nonexamining physician cannot by itself constitute substantial evidence that justifies the rejection of the opinion of either an examining physician or a treating physician." *Lester*, 81 F.3d at 831. She observes that Drs. Bailey and Brown only had the opportunity to address Dr. Parker's 2010 and 2011 evaluations, and did not mention the evaluations by Drs. Lui and Lewis. *Cf.* Social Security Ruling (SSR) 96-6p ("In appropriate circumstances, opinions from State agency [consultants] may be entitled to greater weight than the opinions of treating or examining sources. For example, the opinion of a State agency [consultant] may be entitled to greater weight than a treating source's medical opinion if the State . . . consultant's opinion is based on a review of a complete case record that includes a medical report from a specialist in the individual's particular impairment which provides more detailed and comprehensive information than what was available to the individual's treating source.") She maintains the State agency consultants simply disagreed with Dr. Parker without giving any evidentiary basis to support their conclusion, and argues the consistency of the examining physician opinions undermines the weight assigned to the opinions of the non-examining sources.

The ALJ did not, in this case, simply rely on the opinions of the non-examining physicians to reject the opinions of the examining physicians. As discussed above, the ALJ provided specific and legitimate reasons for rejecting the opinions of the examining physicians.

Nor does plaintiff otherwise demonstrate error in the reliance on the opinions of Drs. Bailey and Brown. As State agency medical consultants, they are "highly qualified" and "experts in Social Security disability evaluation." 20 C.F.R. §§ 404.1527(e)(2)(i),

416.927(e)(2)(i); SSR 96-6p. Contrary to plaintiff's contention that their expertise is of relevance in only limited circumstances, such as determinations at step three, State agency consultants "consider the medical evidence in disability cases and make findings of fact on the medical issues, including, but not limited to, the existence and severity of an individual's impairment(s), the existence and severity of an individual's symptoms, whether the individual's impairment(s) meets or is equivalent in severity to the requirements for any [listed] impairment . . . , and the individual's [RFC]." SSR 96-6p. Moreover, while Drs. Bailey and Brown may not have reviewed all of the examining physician reports, they did, unlike some or all of the examining physicians, review plaintiff's treatment records. (AR 68, 79.)

Moreover, "the report of a nonexamining, nontreating physician need not be discounted when it 'is not contradicted by *all other evidence* in the record.'" *Andrews*, 53 F.3d at 1041 (quoting *Magallanes*, 881 F.2d at 752 (emphasis in original)). Here, the opinions of Drs. Bailey and Brown were not contradicted by all other evidence in the record. Instead, as described by the ALJ, the record included, for example, numerous MSEs showing minimal remarkable or generally unremarkable findings failing to corroborate plaintiff's allegations of debilitating mental symptoms. (AR 18-19.) The record also contained at least portions of medical opinions from the examining physicians that contradicted plaintiff's allegations as to the extent of her limitations and corresponded with the assessed RFC. For example, Drs. Parker and Lewis opined as to no more than mild to moderate limitations in plaintiff's ability to understand, remember, and persist in relation to simple and complex instructions (AR 230, 238, 400), Dr. Lewis opined as to no more than moderate limitations in relation to any other cognitive factors (AR 400), and Drs. Lewis and Lui opined as to only moderate limitations in

public contacts (AR 400, 410). Considering this evidence, and the record as a whole, the ALJ reasonably assigned significant weight to the opinions of Drs. Bailey and Brown.

Credibility

Absent evidence of malingering, an ALJ must provide clear and convincing reasons to reject a claimant's testimony. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007) (quoting *Bunnell v. Sullivan*, 947 F.2d 341, 344 (9th Cir. 1991)). *See also Vertigan v. Halter*, 260 F.3d 1044, 1049 (9th Cir. 2001). "General findings are insufficient; rather, the ALJ must identify what testimony is not credible and what evidence undermines the claimant's complaints." *Lester*, 81 F.3d at 834. "In weighing a claimant's credibility, the ALJ may consider his reputation for truthfulness, inconsistencies either in his testimony or between his testimony and his conduct, his daily activities, his work record, and testimony from physicians and third parties concerning the nature, severity, and effect of the symptoms of which he complains." *Light v. Social Sec. Admin.*, 119 F.3d 789, 792 (9th Cir. 1997).

In this case, the ALJ found that, while plaintiff's medically determinable impairments could reasonably be expected to cause some of the alleged symptoms, her statements concerning the intensity, persistence, and limiting effects of those symptoms were not entirely consistent with the evidence of record. Contrary to plaintiff's contention, the ALJ provided a number of clear and convincing reasons in support of that conclusion.

A. Medical Evidence

"Contradiction with the medical record is a sufficient basis for rejecting the claimant's subjective testimony." *Carmickle*, 533 F.3d at 1161. Also, "[w]hile subjective pain testimony cannot be rejected on the sole ground that it is not fully corroborated by objective

medical evidence, the medical evidence is still a relevant factor in determining the severity of the claimant's pain and its disabling effects." *Rollins*, 261 F.3d at 857; SSR 96-7p. The ALJ here found plaintiff's allegations as to the degree of her symptoms inconsistent with, and not corroborated by, the results of numerous MSEs. (AR 17-18.) While plaintiff accurately notes that the ALJ did not describe all of the examination results and observations of the physicians, she fails to demonstrate the ALJ's interpretation of the evidence as contradicting her testimony as to the extent of her limitations and as supporting the assessed RFC was not rational.

B. Minimal Treatment History and Failure to Follow Prescribed Treatment

An ALJ appropriately considers evidence of minimal or conservative treatment in assessing a claimant's credibility. *Parra v. Astrue*, 481 F.3d 742, 750-51 (9th Cir. 2007); *Meanel v. Apfel*, 172 F.3d 1111, 1114 (9th Cir. 1999). An ALJ also appropriately considers an unexplained or inadequately explained failure to seek treatment or follow a prescribed course of treatment. *Tommasetti*, 533 F.3d at 1039.

In this case, the ALJ found plaintiff's "generally minimal treatment history and failure to follow prescribed treatment [to] raise additional credibility concerns about the alleged severity of mental symptoms." (AR 18.) She pointed to plaintiff's testimony that "she quit prescribed and monitored methadone treatment and takes benzodiazepines that she gets from a friend." (*Id*.) The ALJ stated that "[t]reatment records that do exist show minimal findings." (*Id*.) She described a November 2011 evaluation in which plaintiff complained of depressive symptoms and difficulty concentrating, with an examination revealing she had "a well-groomed appearance, pleasant and cooperative attitude, and good eye contact[,]" and that, "[w]hile she appeared to have depressed mood and restricted range of affect, she had

psychomotor activity within normal limits, speech and language that was normal in rate and rhythm, and thought process that was logical and connected." (*Id*. (citing AR 258-59).) Testing showed intact immediate, recent, and remote memory, and the clinician found no impairments noted in terms of cognitive functioning. (*Id*. (citing AR 259-60).) The ALJ also described a February 2012 record in which plaintiff had normal speech, casual grooming, and normal psychomotor activity, and, despite complaints of severe anxiety, had good eye contact, logical thought process, and appropriate thought content. (*Id*. (citing AR 266).) She described plaintiff's report, one month later, that she was "'doing really well on Methadone'." (*Id*.) The ALJ, as such, properly considered evidence of plaintiff's minimal treatment and failure to comply with prescribed treatment.

C. Activities

An ALJ properly considers evidence that a plaintiff's activities contradict the degree of limitation alleged. *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007). In this case, the ALJ found plaintiff's range of daily functioning to indicate an individual "who is more active than one would expect based on the alleged severity of mental symptoms." (AR 19.) As described above, the ALJ pointed to reports and evidence of no problems with personal care; ability to prepare meals and perform household chores, including cleaning, laundry, and feeding cats; that she lives with and goes shopping with a friend, goes to the library twice weekly, goes outside her home three to four times daily, and uses public transportation; that she alleged feeling "'awkward around people'" but did not have any problems getting along with family, friends, neighbors, or others; she attended appointments at a methadone clinic and classes, performing well academically when she was able to attend; manages her own finances; reads,

watches television, and uses the computer at the library; and takes daily walks lasting forty to forty-five minutes. (*Id.*)

The ALJ found "such a wide range of activities" inconsistent with plaintiff's allegations of debilitating anxiety and difficulty with concentration, and concluded a thorough review of the evidence shows she is able to function at a higher level than alleged, and that "decreased functioning is more a matter of motivation than capacity." (*Id.*) With respect to the latter statement, the ALJ pointed to documents in the record wherein plaintiff reported "she stopped going to Alcoholics Anonymous meetings due to 'laziness'", and stated: "'Seems I should do more . . . , but I'm so lazy'." (AR 19 (citing AR 233, 274).) Plaintiff points to evidence as reflecting her inability to consistently or successfully engage in activities identified by the ALJ, and maintains the statements regarding her "laziness" reflect depression markedly impacting her motivation. However, the ALJ here reasonably considered and interpreted the evidence of plaintiff's activities as detracting from the credibility of her testimony. *See Molina v. Astrue*, 674 F.3d 1104, 1112-13 (9th Cir. 2012) ("Even where . . . activities suggest some difficulty functioning, they may be grounds for discrediting the claimant's testimony to the extent that they contradict claims of a totally debilitating impairment.")

D. Other Factors

The ALJ also found other factors to raise additional credibility concerns:

> The claimant has a history of opioid dependence, in remission, and felony convictions stemming from an episode in which she wrote her own prescriptions for controlled substances. She reported that she was terminated from her prior work as a certified nursing assistant as a result of her felony convictions. In fact, she reported that she "would like to work, but is 'scared . . . about applying for work' due to her criminal [history]'". Such evidence casts doubt on the veracity of the allegations of debilitating symptoms and raises concerns about

> the motivation behind such alleged symptoms. I also note based upon her testimony that the claimant was achieving A grades during a period of compliance with methadone treatment, and that her withdrawal from school is as plausibly attributable to non-compliance as to any other explanation. Nonetheless, the [RFC] outlined above accounts for the waxing and waning of her symptoms, which seem to be exacerbated by her noncompliance with methadone treatment.

(AR 19-20, citations to record omitted.)

Plaintiff provides some context regarding her drug addiction and felony conviction (*see* Dkt. 22 at 18-19), but fails to support the contention that the ALJ improperly considered these factors. The ALJ may use "ordinary techniques of credibility evaluation, such as the claimant's reputation for lying, prior inconsistent statements concerning the symptoms, and other testimony by the claimant that appears less than candid[.]" *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996). An ALJ is also "entitled to draw inferences logically flowing from the evidence." *Sample v. Schweiker*, 694 F.2d 639, 642 (9th Cir. 1982).

In this case, the ALJ reasonably considered plaintiff's conviction of a crime involving dishonesty as an additional reason for finding her not credible. *See, e.g.*, *Albidrez v. Astrue*, 504 F.Supp.2d 814, 822 (C.D. Cal. 2007) (finding consideration of crimes involving moral turpitude, such as showing a false ID to a peace officer, as well as violent crime of attempted robbery, properly considered as basis for adverse credibility determination). Plaintiff further identifies no error in the ALJ's consideration of evidence raising concerns about her motivation and the impact of her failure to comply with her methadone treatment. *See Osenbrock v. Apfel*, 240 F.3d 1157, 1165-67 (9th Cir. 2001) (finding an ALJ properly discounted a claimant's testimony due to evidence of self-limitation and lack of motivation), and *Tommasetti*, 533 F.3d at 1039 (failure to seek or follow prescribed course of treatment properly considered).

The ALJ, in sum, provided a number of clear and convincing reasons for finding plaintiff not fully credible. Her decision has the support of substantial evidence.

Steps Four and Five

Plaintiff avers errors at steps four and five given the errors in the consideration of the medical opinion evidence and her credibility. This mere restating of plaintiff's arguments does not suffice to demonstrate error. *See Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1175-76 (9th Cir. 2008).

CONCLUSION

For the reasons set forth above, this matter should be AFFIRMED.

DATED this 3rd day of June, 2014.

Mary Alice Theiler
Chief United States Magistrate Judge